No. 77

Office-Supreme Court, U.S.
FILED
OCT 3 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

LAWRENCE LONG, PETITIONER,

v.

THE DISTRICT COURT OF IOWA, IN AND FOR LEE COUNTY, FORT MADISON, IOWA, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

OPINION BELOW

The judgment of the Supreme Court of Iowa will not be officially reported. A true copy of the same is, however, found at page 44 of the record.

JURISDICTION

The judgment of the Supreme Court of Iowa was entered on May 3, 1965. The petition for a writ of certiorari was filed with this Court on May 20, 1965.

The petitioner predicates jurisdiction for this Court's review under 28 U.S.C. 1257(3).

QUESTION PRESENTED

The order granting the petitioner's application for certiorari stated the question for review as follows:

> Did the refusal of the state trial court to provide a hearing transcript for the petitioner, solely because state law made no provision for furnishing such transcript without the payment of a fee, deny the petitioner the opportunity to obtain full appellate review of the trial court's denial of the petitioner's petition for a writ of habeas corpus and thereby deprive the petitioner of the equal protection of the laws?

STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions relevant to respondent's Argument are set forth in Appendix A.

STATEMENT

Lawrence Long was arrested in Mahaska County, Iowa, on April 9, 1963, and charged with larceny as proscribed by Section 709.1 of the 1962 Code of Iowa (R. pp. 1, 3). He was brought before Justice of the Peace W. E. Miner the next day for a preliminary hearing at which time, according to the magistrate's records, he entered a plea of guilty (R. p. 1). Though it is not entirely clear from the present record, the State concedes that at the time of this hearing the petitioner was not represented by counsel.

A county attorney's true information was filed on April 22, 1963, charging larceny (R. pp. 4-5), and when the petitioner was brought that same day before the District Court of Iowa, Mahaska County, for arraignment an attorney was appointed and a plea of not guilty was recorded. The cause came on for trial on October 14, 1963, at the conclusion of which the jury returned a guilty verdict (R. pp. 7-8). On October 21, 1963, the trial court sentenced the petitioner to confinement in the State Penitentiary at Fort Madison, Lee County, Iowa, for a term not to exceed five (5) years (R. pp. 8-9). The judgment of conviction was affirmed on appeal by the Supreme Court of Iowa, *State* v. *Long*, 256 Iowa 1304, 130 N.W.2d 663.

Requesting leave to proceed in forma pauperis, the petitioner, on January 13, 1965, filed an application for a writ of habeas corpus in the District Court of Iowa, Lee County, alleging numerous grounds as to how his restraint under the criminal judgment is unlawful (R. pp. 11-19). The specific contentions as to eligibility for habeas relief will be considered under a portion of the argument relevant thereto (infra, pp. 20-24). The District Court granted the petitioner's request to proceed as a pauper and on January 29, 1965, an evidentiary hearing was held (R. pp. 28, 30). By order dated February 20, 1965, the District Court denied the habeas application (R. pp. 30-31).

The petitioner next filed a notice of appeal to the Supreme Court of Iowa and in connection therewith made application to the Lee County District Court for a free copy of the habeas hearing transcript, such application alleging that the hearing transcript was "necessary to prepare an adequate record with which to prosecute an effective appeal" (R. pp. 32, 34-35). The District Court ruled on March 23, 1965, that habeas corpus is a civil action and

that no provision of law existed for furnishing a free hearing transcript (R. p. 36). Thereupon, the petitioner filed an application with the Iowa Supreme Court praying review by certiorari of the lower court's order denying him a transcript without cost (R. pp. 38-42). The certiorari petition alleged that securing a copy of the transcript was necessary to obtain "full appellate review" and that the order denying a free transcript deprived him of due process and equal protection of law under the Fourteenth Amendment to the United States Constitution (R. pp. 39-40).[1] On May 3, 1965, the Supreme Court of Iowa entered an order summarily denying the application for certiorari, citing *Waldon* v. *District Court of Lee County,* 256 Iowa 1311, 130 N.W.2d 728. This order, a final judgment of Iowa's highest Court, presents the subject matter for this Court's review.

SUMMARY OF ARGUMENT

I

The District Court of Iowa, Lee County, denied the petitioner, an indigent, a free copy of the transcript of the habeas hearing because "habeas corpus being a civil action there is no provision in the law for the furnishing of a transcript without the payment of [a] fee." (R. p. 36). As our first argument, we concede that in view of *Griffin* v. *Illinois,* 351 U.S. 12, and its progeny, whether habeas corpus be labeled a civil or a criminal action is irrelevant to the question of whether an indigent prisoner seeking review of a post conviction proceeding is entitled to a free hearing transcript. As we read those decisions it appears that a substantial majority of this Court, if not the entire

[1]Iowa Rule of Civil Procedure 206 (1962 Code of Iowa, Vol. 2, p. 2689) provides for review by certiorari in the Supreme Court of Iowa "where an inferior tribunal . . . exercising judicial functions, is alleged to have exceeded its . . . proper jurisdiction or otherwise acted illegally."

Court, is committed to the proposition that where a State provides an appeal from the denial of a post conviction remedy it is constitutionally required to provide a means of affording adequate appellate review to indigents seeking such review.

While the trial court erred in its reason for denying the transcript, it doesn't necessarily follow that the Iowa Supreme Court improperly affirmed the lower court's order. We contend the real issue is whether the petitioner can obtain adequate appellate review of the contentions raised in the habeas action without a free hearing transcript. Resolution of that question is the subject matter of the second and third divisions of our argument.

II

As the second portion of our argument, we contend that the Iowa Rules of Civil Procedure applicable to habeas corpus appeals are flexible and present a means by which an indigent appellant can obtain an adequate record for an appeal without resort to a hearing transcript. We argue that, in particular, Rule of Civil Procedure 340, 1962 Code of Iowa, Vol. 2, pp. 2693-2694, requires the trial judge ultimately to settle any difference on a proposed record "to the end that the abstract correctly shows the evidence and proceedings at the trial" and that in this connection the judge can call upon his official short hand reporter to help him execute this function. We recognize that in a given case an indigent appellant may lack the ability to cope with this procedural rule relative to obtaining an adequate record for review but we contend that where an indigent prisoner complains that the State has denied him due process or equal protection of the laws he has not made a sufficient showing of such denial by the mere conclusory allegation that he needs a hearing transcript to get a meaningful appeal.

III

In the final division of our argument, we contend that where an indigent prisoner filed a petition for a writ of habeas corpus attacking the legality of confinement because of things that allegedly occurred during the criminal proceedings, a transcript of the habeas hearing will not be necessary to obtain adequate appellate review of the denial of the petition where a transcript of the criminal proceedings is available and presents a sufficient basis for adequate review of the contentions raised in the habeas action. We note that in the instant case, the petitioner appealed the criminal judgment and in connection with the appeal was provided a transcript of the criminal trial proceedings. We argue that the criminal trial record presents yet another method by which the petitioner can obtain adequate appellate review of the contentions set forth in his petition for habeas relief and that for this reason alone it was not encumbent upon the State to furnish him with a free transcript of the habeas hearing.

ARGUMENT

I

IN VIEW OF *GRIFFIN V. ILLINOIS* AND ITS PROGENY IT APPEARS THAT THE COURT IS COMMITTED TO THE PROPOSITION THAT WHERE A STATE PROVIDES AN APPEAL FROM THE DENIAL OF A POST-CONVICTION REMEDY IT IS CONSTITUTIONALLY REQUIRED TO PROVIDE MEANS OF AFFORDING ADEQUATE AND EFFECTIVE APPELLATE REVIEW TO CONVICTED INDIGENT PERSONS SEEKING SUCH REVIEW.

Lawrence Long's bid for relief in habeas corpus via the Iowa trial court did not succeed and as was his right under Iowa law he sought appellate review in the Supreme Court of Iowa.[2] In connection with the appeal, he moved the

[2]A trial court's judgment denying a petition for a writ of habeas corpus is appealable as a matter of right to the Iowa Court, see Rule 331, Rules of Civil Procedure, 1962 Code of Iowa, Vol. 2, pp. 2691-2692, and *Waldon* v. *District Court of Lee County*, 256 Iowa 1311, 130 N.W.2d 728.

trial court for a free copy of the habeas hearing transcript. Long is an indigent. The trial court denied his request for a hearing transcript stating that habeas corpus is a "civil action" and that "there is no provision of law for the furnishing of a transcript without the payment of fee" (R. p. 36). The Supreme Court of Iowa in denying Long's certiorari petition, in effect, summarily affirmed the lower court's order denying the transcript without cost (R. p. 44). This being the posture of the case, the Attorney General is, from the standpoint of being an advocate, in a somewhat precarious position. A number of decisions of this Court, as we read them, seemingly indicate that whether habeas corpus be labeled a civil or a criminal action is irrelevant to the question of whether an indigent prisoner seeking review of a post conviction proceeding is entitled to a free hearing transcript. Accordingly, it is necessary at the outset to define clearly the relevant criterion to which we must look to ascertain if one in the petitioner's position was or was not entitled to a free hearing transcript. The starting point is, of course, *Griffin* v. *Illinois,* 351 U.S. 12.

Judson Griffin and James Crenshaw having been convicted of armed robbery in Cook County, Illinois, moved the trial court to supply them, without cost, a certified copy of the trial transcript because they were "poor persons with no means of paying the necessary fees to acquire the transcript . . . needed to prosecute an appeal." At the time the motion was denied, as well as when the case ultimately came before this Court, it was necessary under Illinois Law to get full appellate review of trial errors to furnish the appellate court with a bill of exceptions or report of proceedings at the trial certified by the trial judge (351 U.S. at 13). In this connection, the Illinois Attorney General conceded that it was sometimes impossible to prepare such bill of exceptions or reports without a stenographic

transcript of the trial; that in other than non-capital cases a defendant needing a transcript must buy it; and that Griffin and Crenshaw "needed a transcript to get adequate appellate review of their alleged trial errors" (351 U.S. at 14-16). The Attorney General argued, however, that the denial of a free transcript did not violate either the Due Process or Equal Protection clause of the Fourteenth Amendment.

A majority of the Court expressed the opinion that where a State provides a scheme for direct review of criminal judgments it cannot, consistent with the Fourteenth Amendment, deny an indigent defendant adequate and effective appellate review because of the inability to purchase a trial transcript. In the words of Mr. Justice Black announcing the Court's judgment "[d]estitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts" (351 U.S. at 19).[8]

Though the *Griffin* principle of "adequate appellate review despite poverty" was for a time limited in application to direct criminal appeals, *Eskridge* v. *Washington State*

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[8]Technically, there was no opinion of the Court in *Griffin*. Mr. Justice Black announced the Court's judgment and filed an opinion concurred in by Chief Justice Warren and Justices Clark and Douglas. Mr. Justice Frankfurter wrote a special concurring opinion. Mr. Justice Harlan in a dissenting opinion on the merits contended that neither the Due Process or Equal Protection clauses required the result reached by the other five Justices. Subsequent decisions seemingly demonstrate, however, that a substantial majority of the Court, if not the entire Court, is now committed to the *Griffin* proposition as paraphrased in the text to this note. Thus, in *Lane* v. *Brown*, 372 U.S. 477, Mr. Justice Stewart, in speaking for Chief Justice Warren and Justices Black, Douglas, Brennan, White and Goldberg restated as the holding of *Griffin* substantially the proposition set forth in the text. In *Douglas* v. *California*, 372 U.S. 353, decided the same day as *Lane* v. *Brown*, Mr. Justice Clark expressly said that he adheres to his vote in *Griffin* (372 U.S. at 358), and Mr. Justice Harlan wrote that in so far "as the result in [*Griffin*] rested on due process grounds, I fully accept the authority of Griffin" (372 U.S. at 361, note 1).

Board, 357 U.S. 214; and *Burns* v. *Ohio*, 360 U.S. 252, it ultimately became also significant in post conviction proceedings, *Smith* v. *Bennett*, 365 U.S. 708; and *Lane* v. *Brown*, 372 U.S. 477. The latter case is of especial relevance.

Brown was convicted of murder in Indiana and sentenced to death. On appeal the conviction was affirmed and his subsequent petition for a writ of error coram nobis was denied by the State trial court. Indiana permitted an appeal from such denial but also required that the coram nobis transcript be filed in such an appeal before jurisdiction attached. In this respect, under Indiana's public defender act of 1945, only the public defender, in his discretion, could order a transcript of the coram nobis hearing for an indigent's appeal and this the public defender refused to do for Brown. Thus, Brown was denied any appeal at all from the lower court's denial of his coram nobis petition. The Court was unanimous in its judgment that Indiana's procedure violated the Fourteenth Amendment. In delivering the opinion of the Court, Mr. Justice Stewart pointed out that *Griffin* v. *Illinois* "held that a State with an appellate system which made available transcripts to those who could afford them was constitutionally required to provide 'means of affording adequate and effective appellate review to indigent defendants'" (372 U.S. at 482). The *Griffin* principle, said the opinion, also applies to State post conviction proceedings.[4] The case was remanded to the federal district court with directions that an appropriate order be entered providing for Brown's discharge "unless within a reasonable time the State of Indiana provides him an appeal on the merits to the Supreme Court of

[4] "The present case falls clearly within the area staked out by the Court's decisions in Griffin, Burns, Smith and Eskridge. To be sure, this case does not involve, as did Griffin, a direct appeal from a criminal conviction, but Smith makes clear that the Griffin principle also applies to state collateral proceedings. . . ." (372 U.S. at 484).

Indiana from the denial of the writ of error coram nobis" (372 U.S. at 485).

In summary, construing *Griffin* v. *Illinois* and the intervening decisions together with *Lane* v. *Brown,* it appears that a substantial majority of this Court, if not the entire Court, is committed to the proposition that where a State provides a scheme for appellate review of the denial of a post conviction remedy it is constitutionally required to provide means of affording adequate appellate review to indigent prisoners seeking such an appeal. This does not mean, however, that as a constitutional minimum Iowa must furnish a habeas hearing transcript in every case involving an indigent; all that is required is that the State afford the means of obtaining "adequate appellate review" despite poverty, *Griffin* v. *Illinois,* 351 U.S. 12, 20; *Eskridge* v. *Washington State Board,* 357 U.S. 214, 216; *Draper* v. *Washington,* 372 U.S. 487, 495.

Having delineated the constitutional issue applicable to the question of whether Lawrence Long is entitled to a free hearing transcript, we are forced to conclude that the question cannot properly be resolved by a ruling that habeas corpus is a civil action and by stating that State law makes no provision for free transcripts. To this extent, it is our unfortunate duty to concede that the State trial court fell into error. It does not necessarily follow, however, that the Supreme Court of Iowa improperly denied Long's petition for a writ of certiorari seeking review of the lower court's order denying the transcript. As we see it, the real issue is whether the petitioner can obtain adequate appellate review of the contentions raised in his habeas petition without a free hearing transcript, coupled with the question of who has the burden to demonstrate that such a transcript is necessary to such review. In this respect, we think it extremely important to note that both conceptually and

realistically the petitioner still has pending before the Iowa Court an appeal seeking review on the merits of the lower court's denial of his petition for a writ of habeas corpus.[5] The remainder of our discussion will focus on the inquiry of whether that appeal can be constitutionally disposed of without providing the petitioner with a free hearing transcript.

II

THE IOWA RULES OF PROCEDURE APPLICABLE TO PREPARING A RECORD FOR AN APPEAL FROM THE DENIAL OF A HABEAS ACTION ARE FLEXIBLE AND IT CANNOT BE ASSUMED THAT AN INDIGENT HABEAS APPELLANT WILL BE DENIED ADEQUATE REVIEW UNLESS HE IS FURNISHED A FREE COPY OF THE HEARING TRANSCRIPT. MOREOVER, BEFORE SUCH AN APPELLANT CAN COMPLAIN THAT HE HAS BEEN DEPRIVED OF A CONSTITUTIONAL RIGHT UNDER THE FOURTEENTH AMENDMENT HE MUST MAKE SOME ATTEMPT TO DEMONSTRATE HIS INABILITY TO WORK WITH THESE RULES AND THE RESULTING NEED FOR A FREE TRANSCRIPT.

The petitioner's application to the Iowa trial court (R. p. 34) and his petition for a writ of certiorari filed with the

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[5]As stated in note 3, supra, a trial court's judgment denying a habeas petition is appealable, as of right, to the Iowa Supreme Court. In this respect, the State concedes that the petitioner filed a timely and proper notice of appeal (R. p. 32), with the result that the Iowa Supreme Court obtained jurisdiction to review the lower court's denial of his habeas petition (cf. Rules 335 and 336, Rules of Civil Procedure, 1962 Code of Iowa, Vol. 2, p. 2692). Short of a disposition on the merits, it is contemplated that an appeal can be disposed of by specified action on behalf of the appellee or by the Iowa Court on its own motion where the appellant's record has not been filed within the time permitted by the rules (Rule 342 (c) and (d), supra, p. 2694). The appellee, here the State, its counsel the Attorney General, has taken no action to obtain a dismissal of Long's appeal for failure to file a timely record. Moreover, the Iowa Court will not dismiss an appeal on its own motion where "reasonable excuse be shown for . . . failure to comply with these rules" (Rule 342 (d), supra), and we suppose it is beyond question that "reasonable excuse" exists where the appeal is held up, as it is here, pending a decision on a constitutional question applicable to the appeal by the United States Supreme Court. Accordingly, the petitioner still has an appeal pending before the Iowa Court, the disposition of which is stayed until the outcome of this certiorari action.

Iowa Supreme Court (R. pp. 38-40) contain the conclusory allegations that the hearing transcript "is necessary to prepare an adequate record with which to prosecute an effective appeal" and that without the transcript he is "foreclosed from pursuing all phases of his appeal, other than the mere filing of his intention to [do so]." In response to these allegations, we admit that a copy of the habeas hearing transcript would no doubt be helpful in most appeals but we are not ready to concede, as the Attorney General did in *Griffin* v. *Illinois,* 351 U.S. at 16, that the petitioner "needs a transcript . . . to get adequate appellate review."[6]

This Court is aware that a substantial number of in forma pauperis criminal appeals are frivolous, cf. *Douglas* v. *California,* 372 U.S. 353, 359, note 1 (dissenting opinion), and *Griffin* v. *Illinois,* 351 U.S. 12, 24 (concurring opinion). And, while we shall make no attempt to proffer statistics as to the percentage of frivolous appeals in post conviction proceedings, we suppose the number is overwhelming. This does not mean, of course, that in forma pauperis post conviction appeals are to be arbitrarily denied or diluted to meaningless proceedings because of poverty, cf. *Lane* v. *Brown,* 372 U.S. 477, 485, and *Coppedge* v. *United States,* 369 U.S. 438. On the other hand, where a State not only gives leave for appellate corrections of errors but must pay for the cost of its exercise by indigents, "it may protect itself so that frivolous appeals are not subsidized and public moneys not needlessly spent." *Griffin* v. *Illinois,* 351 U.S. 12, 24 (concurring opinion). This principle

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[6]Our refusal to make this concession rests not alone upon the premises to be advanced in this division of the Argument but also upon the proposition tendered in the third division of our Argument, infra, pp. 19-24, to the effect that there is available for the appeal, apart from the hearing transcript, record material even more relevant to the merits of the contentions set forth in Long's petition for a writ of habeas corpus.

opposing needless expenditure is indelibly written in this Court's decisions and cannot, as the petitioner supposes, be erased by conclusory assertions as to a denial of equal protection or due process. As the Court put it in *Griffin*:

> "We do not hold, however, that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it. The Supreme Court may find other means of affording adequate and effective appellate review to indigent defendants." (351 U.S. at 20).

The principle was reaffirmed in *Eskridge* v. *Washington State Board,* 357 U.S. 214, 216 and again very recently in *Draper* v. *Washington,* 372 U.S. 487, 495. In *Draper,* the Court noted that alternative methods of making up a record for the appeal are permissible provided they accord adequate review. In this connection, the Court made the following observations:

> "A statement of facts agreed to by both sides, a full narrative statement based perhaps on the trial judge's minutes taken during trial or on the court reporter's untranscribed notes . . . might all be adequate substitutes, equally as good as a transcript." (372 U.S. at 495).[7]

The question then as we would frame it, is whether Iowa provides alternative methods for obtaining an adequate appellate record, which methods do not require, as indispensible thereto, a hearing transcript? Appeals from the denial of a petition for a writ of habeas corpus are governed procedurally by the Iowa Rules of Civil Procedure, 1962 Code of Iowa, Vol. 2, pp. 2645-2699 (hereinafter cited only

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[7]In addition to the alternative methods suggested in *Draper* for making up a record, where the appeal is from the denial of a post conviction remedy and the attack is as to things which allegedly occurred at the criminal trial the transcript recording that trial, if available, may itself be the more relevant record for the appellate court to review, infra, pp. 19-24.

by reference to the Rule in issue). The applicable Rules to be now considered are set forth in full in Appendix "A".

One Method:

Rule 340 (a)-(h), Appendix "A", infra, pp. A-1-A3, provides the most commonly followed means for obtaining the record for civil appeals to the Iowa Supreme Court. Subsection (a) states that promptly after taking an appeal the appellant shall file with the trial court a duplicate typewritten "abstract of so much of the record in that court . . . as is material to the appeal", at which time the "reporter's transcript shall [also] be filed." Rule 340 (b) provides that if the abstract does not embrace the whole record, including exhibits or references thereto, it shall include a concise statement of the points to be relied upon on appeal. Rule 340 (c) directs that within 20 days, unless an extension of time is allowed, any other party to the appeal may, in like manner, file duplicate amendments, proposed corrections, substitutions or additions to the proposed abstract of record. The Rule further provides that at the expiration of the time for amendment either party, on not less than three days written notice, may present the proposed abstract and all proposed amendments to the judge who tried the case *"who shall settle any differences to the end that the abstract correctly shows the evidence and proceedings at the trial,"* after which the judge shall append to the proposed abstract an order settling the same (Emphasis added). . Rule 340 (f) states that the abstract so allowed shall constitute the record for appeal and the appellant shall cause it to be printed. As an alternative to this procedure, Rule 340 (h) provides that the parties may file with or include in the proposed abstract "their written agreement that it is correct [and] the trial judge

shall thereupon certify that such abstract has been so agreed to, and is the record on appeal."[8]

We ask the Court to assume for a moment that resort to the record making procedures of Rule 340 (a)-(h) does not require that "the reporter's transcript be filed at the same time" as the appellant's typewritten manuscript of the proposed abstract. Predicated on this assumption, an appellant is in a position to include in a manuscript a narrative statement of the evidence as he believes it to be shown in the reporter's notes, together with the pleadings, orders and judgment.[9] If the other party disagrees with the accuracy of the proposed abstract it has the burden to amend the same. In any event, where there is a dispute as to the proposed record the trial judge is enjoined to settle the record to the end that *"the abstract correctly shows the evidence and proceedings at the trial."* In this respect, the Court's duty is not discretionary; the rule says he "shall" settle the record. Moreover, Section 605.7 of the 1962 Code of Iowa specifically provides that the trial judge's official court reporter shall, in addition to reporting trials, "perform such other . . . related duties in aid of the court as the judge who appointed him may direct." It is, we think, not unfair to assume that an

[8]Prior to the adoption of Rule 340 in 1943, Iowa Acts, 50 G.A., Ch. 278, the appellant's abstract of record was submitted to the Supreme Court with his brief and was presumably the true version of the trial record unless denied or corrected by the appellee's subsequent abstract, Iowa Acts, 42 G.A., Ch. 231, §1 (1927). Costs were taxed to any party filing a denial or abstract without good and sufficient cause. The record under this system came to the Supreme Court as a jigsaw puzzle; hence it became desirable to settle the record in the trial court under supervision of the trial judge with a single document being sent to the Supreme Court, see 4 Cook, Iowa Rules of Civil Procedure 199-200 (rev. ed. 1951). See also, Note, Form of Appellate Record in Iowa, 48 Iowa Law Rev. 77 (1962).

[9]As to pleadings, orders and judgments, there is certainly no argument that petitioner Long was deprived of these (R. pp. 15-27, 28, 29, 30-31, 33, 34-35, 36, 37, 38-42 and 43-44).

Iowa trial judge will execute his obligation to settle a record even to the extent, where necessary, of directing his court reporter to help him by reading back all or a relevant portion of the shorthand report of the trial, cf. *Draper* v. *Washington*, 372 U.S. at 495. Finally, there is the further possibility that under Rule 340 (h) the parties will agree that a proposed abstract is correct, in which case the trial court must certify the same as the record.

As we view Rule 340, subsections (a) through (h), it is certainly arguable that an adequate record can be obtained by an indigent appellant despite his poverty. The petitioner complains, however, that any resort to these procedures would be frustrated at the outset because he is required to file the very thing he cannot obtain—the trial transcript (brief, pp. 9-10). His argument is long on sympathetic response but short on research. Rule 371, Appendix "A", p. A4, clearly provides that the Supreme Court of Iowa "shall have the power to revoke, change or supplement . . . any rule in division XVI hereof except rules 331-339 inclusive." Rule 340 is in "division XVI" of the Rules.

Thus, the Iowa Court has the authority to "change" the requirement of filing the reporter's transcript under Rule 371 and since the petitioner cannot purchase the transcript which the trial court will not furnish free, it would indeed be a heartless appellate court that would say to the petitioner: "we recognize your right to appeal, the fact that you are poor, and our power to facilitate you, but we will not allow you to resort to Rule 340 unless you buy a transcript and file it." We can ascribe no such cold blooded approach to the Iowa Supreme Court. As we have pointed out in the first division of our argument Long still has an appeal pending before the Iowa Court from the denial of his habeas action and if he desires to resort to Rule 340

procedures for obtaining an appellate record it is a foregone conclusion that the "transcript filing requirement" will be suspended.

In the latter connection, since *Smith* v. *Bennett*, 365 U.S. 708, the Iowa Court has, as a matter of course, upon the request of an indigent habeas appellant, dispensed with the more stringent rules of appellate procedure such as the printing of records and briefs, the required number of copies of each, the nonjurisdictional time requirements, etc. Such suspension of the rules is attested to by numerous unreported judgments entered on behalf of indigent prisoners seeking appeals. We have set forth in Appendix "B", as illustrative, three such applications and the judgments entered thereon.

Another Method:

Rule 340 (J) presents a second method by which an appellant may be successful in making up an adequate record for review. The Rule contemplates that the parties may agree to a statement of the record and when the same is approved by the trial court it shall be the record on appeal.

In view of the foregoing discussion we think it not incorrect to state that the Iowa Rules of Procedure are flexible and while the petitioner has been denied a free hearing transcript we are not prepared to say that Iowa has failed to provide other means by which an indigent appellant could obtain an adequate record for effective review. The petitioner will probably agree that as an abstract proposition this statement is correct but then request the Court to break the promise of *Griffin*, *Eskridge*, and *Draper* because as a practical matter he lacks the wherewithal to

cope with the Rules of Procedure.[10] We shall answer such a contention though it is not articulated in his brief.

Obviously, not every indigent prisoner seeking an appeal has the ability to cope with the procedural rules relative to obtaining a record for appellate review, nor does the observation stop there. Given a free hearing transcript some indigent prisoners will lack even the rudimentary skills necessary to use it meaningfully. These are questions, however, which are irrelevant to the present record unless the Court is willing to judicially notice Long's inability. Both the record and the petitioner's brief contain only conclusory allegations that he needs the transcript to obtain adequate appellate review. The State, he says, has denied me due process and equal protection of the laws by refusing to give me a free hearing transcript. This is, of course, a serious charge and we think it neither unfair nor hard-nosed for the State to insist that the petitioner share some burden of establishing the denial of a constitutional right. As we read the cases, it is incumbent upon the petitioner in a habeas corpus proceeding to produce some proof that he has been denied a constitutional right, *Moore* v. *Michigan,* 355 U.S. 155, 161; *Hawk* v. *Olson,* 326 U.S. 271; *Johnson* v. *Zerbst,* 304 U.S. 458. Placing some burden on the petitioner in the context of the instant case doesn't mean he need be subjected to prolong delay before an adjudication of the merits of the appeal. If the Court agrees that the Iowa Rules of Civil Procedure provide a possible means for obtaining an ade-

[10]If the state appeal is meaningless, as the petitioner claims, we think such factor results not so much from the lack of a free hearing transcript but rather because of his inability to work with the rules discussed in the text. This observation in no way detracts from the proposition that Iowa provides alternative means of obtaining an adequate record for review, though it does point up the desirability of counsel in a given case. Such is, of course, not an issue here.

quate appellate record, its disposition of this case can assure the petitioner protection if he lacks the ability to utilize the rules.

III

WHERE AN INDIGENT PRISONER FILES A PETITION FOR A WRIT OF HABEAS CORPUS ATTACKING THE LEGALITY OF CONFINEMENT BECAUSE OF THINGS THAT ALLEGEDLY OCCURRED DURING THE CRIMINAL PROCEEDINGS, A TRANSCRIPT OF THE HABEAS HEARING WILL NOT BE NECESSARY TO OBTAIN ADEQUATE APPELLATE REVIEW OF THE DENIAL OF THE PETITION WHERE A TRANSCRIPT OF THE CRIMINAL PROCEEDINGS IS AVAILABLE AND PRESENTS A SUFFICIENT BASIS FOR ADEQUATE REVIEW OF THE CONTENTIONS RAISED IN THE HABEAS ACTION. MOREOVER, THE SUPREME COURT OF IOWA DOESN'T NEED A HABEAS HEARING TRANSCRIPT TO INFORM THEM WHAT THEIR OWN RECORDS REFLECT OR FAIL TO REFLECT.

In *Draper* v. *Washington*, 372 U.S. 487, 495, the Court noted the possibility of specific alternative methods of according an indigent defendant adequate review of the criminal judgment without furnishing a free copy of the criminal trial transcript. This case presents the opportunity for the Court to further consider this principle in the context of an appeal from a post conviction proceeding with the distinct possibility that a transcript of the criminal proceedings could present an even more relevant basis for adequate review than resort to a transcript of the post conviction hearing. Thus, for example, where the petitioner in a post conviction proceeding contends that an incriminating admission was introduced at the criminal trial in violation of the Self-Incrimination Clause of the Fifth Amendment, the most obvious source to confirm the validity of the contention would be a report of the criminal trial. Moreover, where a petitioner complains of things that allegedly happened or should have happened in con-

nection with a direct appeal from a criminal judgment, the Supreme Court of Iowa doesn't need a transcript of a post conviction hearing to inform it what its own records reflect. The applicability of these propositions to the instant litigation can be demonstrated by considering the petitioner's contentions as to how his present confinement is unlawful.

Lawrence Long's petition for a writ of habeas corpus contains five distinct allegations as to how his present confinement is illegal. We shall discuss each separately and offer comments which we believe relevant to the question presented here.

1. As the record reflects (R. p. 1), Long was brought before Justice of the Peace W. E. Miner for a preliminary hearing at which time he "entered a plea of Guilty." He contends, and we have so conceded in our Statement, supra, p. 2, that he was not at this time represented by counsel. In his petition for habeas relief he alleges that this admission of guilt was introduced at the criminal trial, which introduction violated his constitutional rights (R. pp. 16, 18, 24). If the admission of guilt was introduced as alleged he probably is entitled to relief in habeas corpus under *White* v. *Maryland*, 373 U.S. 59.[11] The point is that the petitioner doesn't need a copy of the habeas hearing transcript to present the *White* v. *Maryland* argument to the Iowa Court if the transcript of the criminal trial is available for review.

2. The petition for habeas relief also alleges that Long's criminal trial counsel was incompetent "due to [the] lack

[11]On October 5, 1964, the Attorney General of Iowa ruled (1964 O.A.G. 160) that while it is not the normal function of a magistrate at a preliminary hearing to receive pleas of guilty, such a plea may be introduced at the trial as an admission of guilt and that, accordingly, *White* v. *Maryland* is applicable to Iowa preliminary hearings.

of time said Attorney had to prepare petitioner's defense" (R. pp. 17, 24). In this connection, the petition states (R. p. 25) "[T]he competence of petitioner's Court-Appointed Attorney is challenged . . . and the question of competence here goes only to said . . . Attorney's conduct and action in representation of petitioner in his criminal trial . . .". Obviously, the most relevant means of reviewing this contention would be to look at a report of the criminal trial proceedings.

3. The petition alleges that he was denied an effective appeal from the criminal judgment in that his court appointed attorney failed to file a brief on the merits and permitted the appeal to be disposed of in the Supreme Court of Iowa on a Clerk's Transcript (R. pp. 17, 25).[12] The Iowa Supreme Court doesn't need a habeas hearing transcript to review this contention since its own records will reflect the accuracy of the argument. As a matter of fact, the records of the Supreme Court of Iowa reveal that on March 17, 1964, Long's attorney, Harold B. Heslinga, caused to be filed in *State* v. *Long*, Criminal Appeal No. 51355, an abstract of record; that on April 30, 1964, the same attorney filed a brief with the Court; and that on May 29, 1964, the same attorney presented an oral argument in the case (see Appendix "C", infra, pp. C1). Even if what the petitioner really means is that his attorney didn't brief all of the possible errors occurring at the trial or failed to competently handle those presented in the brief, such a contention could be adequately reviewed in the post conviction appeal by looking to a report of the criminal proceedings.

---

[12]The Iowa Court's Rules relative to criminal appeals provide that if the appellant's abstract of record is not filed within ninety days after the notice of appeal the appeal will be disposed on the basis of the so-called "Clerk's Transcript" (Supreme Court Rule 15, 1962 Code of Iowa, Vol. 2, pp. 2715-2716). The clerk's transcript in Iowa is the equivalent to the "mandatory record" discussed in *Griffin* v. *Illinois*, 351 U.S. 12, 13, at note 2. The contention posed in the text to this note is a question pending review before this Court in *Entsminger* v. *Iowa*, No. 98, Oct. Term, 1966.

4. As a further ground for relief, the petition alleges that Long was denied the opportunity to consult with an attorney during the course of a police interrogation with the result that the introduction at the trial of incriminating statements elicited by the interrogation "constitutes a denial of the 'Assistance of Counsel' in violation of [the] Sixth Amendment" (R. p. 17). Here again, the criminal trial transcript may be most adequate as a basis to review this contention, particularly to ascertain if any such statements were introduced and to see, for example, if the defendant denied making any such statements. As to this contention, however, there is an even more important reason why the petitioner does not need a hearing transcript for its disposition. *Johnson* v. *New Jersey*, 86 S. Ct. 1772, decided June 20, 1966, holds that *Escobedo* v. *Illinois*, 378 U.S. 478, decided on June 22, 1964, is available only to those persons whose trials began after the date of that decision. Long's trial commenced and was completed in October, 1963 (R. pp. 7-8).

5. The final contention in Long's habeas petition is that he was held in jail for six months pending trial on the criminal charge and thereby deprived of his constitutional right to a speedy trial (R. pp. 16, 24). This was the main issue considered in *State* v. *Long*, 256 Iowa 1304, 130 N.W.2d 663, where the Iowa Court found it regretable that defendant was confined for so long prior to trial but affirmed the conviction. The procedural steps taken to secure Long's release because of this confinement are set forth in the Court's opinion and the facts surrounding such confinement are of record in that Court. One might argue that the Iowa Court erred as a matter of law in rejecting the "speedy trial" issue but a habeas hearing transcript is not needed to make the argument.

As the Court noted in *Smith* v. *Bennett*, 365 U.S. 708, 711, Iowa provides free trial transcripts to indigent defendants seeking direct appeal of criminal judgments. Since Lawrence Long had such an appeal it can be assumed that he was provided such a transcript. In point of fact, Long was furnished a free trial transcript which is still available, a copy is lodged with the Attorney General and a copy is a part of the files of the official court reporter of the Mahaska County District Court (see Appendix "C", infra, pp. C2, C3). It appears that the criminal trial transcript was not in evidence in the Lee County, Iowa, post conviction proceeding and, accordingly, is strictly speaking, not a part of the record. This doesn't necessarily mean that the Iowa Supreme Court cannot look at such transcript in disposing of the habeas appeal. In this connection, we are told that the records of this Court will reflect that the criminal trial transcript involved in *Gideon* v. *Wainwright*, 372 U.S. 335, was not a part of the formal record [illegible]dered up to the Court, but one must certainly admit that the trial transcript played a significant role in the decision, 372 U.S. at 337.

Though the important point is not whether the Iowa Court can look at the trial transcript but rather if it can, does such provide a means of affording adequate review, we see nothing to prevent resort to the criminal trial transcript if it will aid a proper disposition of the appeal. The Iowa Constitution, Art. V, §4, provides that the Supreme Court of Iowa to effectuate its appellate jurisdiction "shall have power to issue all writs and process necessary to secure justice to [the] parties and exercise a supervisory control over all inferior judicial tribunals throughout the State." As we have already noted, supra, p. 16, Rule 371 of the Iowa Rules of Civil Procedure authorizes the Supreme Court to "change or s[illegible]plement" those rules

dealing with the procedural requirements of preparing and bringing before that Court a record to dispose of an appeal. Finally, Rule 341 specifically provides that the Supreme Court on its own initiative or proper suggestion can cause "further proceedings to be had and a supplemental record . . . prepared and certified in the trial court . . ." Accordingly, we have no doubt that the Iowa Court can look to the criminal trial transcript to dispose of the petitioner's contentions and if we are successful here we intend to ask that Court to do so.

CONCLUSION

For the foregoing reasons the State respectfully submits that there exists in Iowa alternative methods by which the petitioner can obtain adequate review of the merits of the post conviction proceeding without furnishing him a free hearing transcript and we request that the judgment of the Supreme Court of Iowa be affirmed.

LAWRENCE F. SCALISE
Attorney General of Iowa

DON R. BENNETT
Assistant Attorney General
State House
Des Moines, Iowa
Attorneys

SEPTEMBER, 1966

APPENDIX A

(Constitutional and Statutory Provisions)

The Iowa Constitution, Article V, Sec. 4, provides in pertinent part as follows:

> "The Supreme Court shall have appellate jurisdiction only in cases in chancery, and shall constitute a Court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe; and shall have the power to issue all writs and processes necessary to secure justice to parties and exercise a supervisory control over all inferior judicial tribunals throughout the state."

The Iowa Rules of Civil Procedure, 1962 Code of Iowa, Vol. 2, pp. 2645-2699, provide in pertinent part as follows:

> "340. Record on appeal.
>
> "(a) Promptly after taking an appeal to the supreme court, appellant shall file with the clerk of the trial court duplicate typewritten abstract of so much of the record in that court, including pleadings, evidence, rulings, orders, judgment and all proceedings in the case, as is material to the appeal. Where exhibits will be copied in full in the printed record, the abstract may so state and refer to them by letter, number or other appropriate designation, without copying them.
>
> "The reporter's transcript shall be filed at the same time; and these rules relative to it shall also apply to bills of exceptions under rule 241. The cost of the transcript shall be taxed in the trial court.
>
> "The clerk shall forthwith notify the attorneys of record for the appellee of such filing.
>
> "(b) If the abstract does not embrace the whole record, and all evidence and proceedings in the transcript, depositions and exhibits, it shall include a concise statement of all points upon which appellant will rely on the appeal, which shall be limited thereto.

"(c) Within twenty days after such filing, or such longer time as the trial court may allow or the parties agree to in writing, any other party to the appeal may, in like manner, file duplicate amendments to appellant's abstract, proposing corrections, substitutions or additions thereto. At the expiration of the time for amendment, either party, on not less than three days written notice may present the proposed abstract and all such proposed amendments, if any, to the judge before whom the case was tried, who shall settle any differences to the end that the abstract correctly shows the evidence and proceedings at the trial, and is in form as provided by these rules. The trial court shall then append to appellant's proposed abstract an order settling the same with any corrections, substitutions or additions it has allowed in conformity with these rules.

"(d) If a party to the appeal shows the trial court a good reason for setting out part of the testimony in question and answer form, such part may appear by questions and answers. If this is not done, testimony of witnesses shall be abstracted in condensed or narrative form.

"(e) Formal parts of all exhibits, and more than one copy of any document, shall be omitted. Documents shall be abridged by omitting formal or irrelevant parts. This rule shall also apply to exhibits to pleadings.

"(f) The abstract allowed as above or under paragraph (h) hereof shall constitute the record on which the cause shall be submitted on the appeal. The appellant shall cause it to be printed, so as also to contain in full any exhibits designated in the abstract by number alone, as provided in paragraph (a) hereof.

"(g) The supreme court may impose or withhold costs for any addition or substitution of irrelevant matter, or the use of needless questions and answers for the narrative statement. To aid it in this respect only,

the clerk of the trial court, at the request of the aggrieved party, shall certify to the supreme court the reporter's transcript, depositions, exhibits and proposed abstract and amendments thereto.

"(h) Instead of proceeding under paragraphs (b) and (c) hereof, the parties may file with or include in the abstract proposed by any party to the appeal, their written agreement that it is correct. The trial court shall thereupon certify that such abstract has been so agreed to, and is the record on appeal.

"(i) Abstracts and the printed record shall contain a brief index of their contents, in which the pleadings shall appear in the order of their filing.

"(j) Agreed record. Instead of proceeding under the foregoing paragraphs (a) to (f) the parties may, promptly after taking an appeal, present for his approval to the judge before whom the case was tried, or if he is not available to any other judge of the same court, an agreed record on appeal. It shall show how the questions arose and were decided in the trial court. It shall either set out so much of the facts pleaded or proved as are necessary to a decision of such questions and to proper disposition of the appeal, or contain an abstract of the relevant proceedings which will enable the supreme court to decide the appeal. It shall include an abstract or copy of the judgment or order appealed from and a brief index of contents. Such agreed record, when approved by said judge, shall be the record on appeal and the appellant shall cause it to be printed, filed with the clerk of the trial court and transmitted to the clerk of the supreme court in accordance with rule 342."

"341. Correcting record—certification.

"(a) If anything material to either party is omitted from the record on appeal by error or accident, or is misstated therein, the parties by stipulation, or the trial court, either before or after the record is trans-

mitted to the supreme court, or the supreme court on its own initiative or proper suggestion, may direct the correction thereof; and, if necessary, that further proceedings be had and a supplemental record be prepared and certified in the trial court; or may require the clerk of the trial court to certify to the supreme court any or all of the evidence or proceedings below.

"(b) Any part or all of the record, including exhibits, in the trial court shall, at the request of the supreme court or any justice thereof, be certified and transmitted by the clerk of the court below to the supreme court."

* * *

"371. Power of supreme court to change.

"The supreme court shall have power to revoke, change or supplement any of these rules which prescribe the procedure in that court. Under this power the court may revoke, change or supplement any rule in division XVI hereof except rules 331-339 inclusive. Any such change or addition shall take effect at such time as the court shall prescribe."

FILED
JAN 29 1964
HELEN M. LYMAN
CLERK SUPREME COURT

IN THE SUPREME COURT OF IOWA

DALE MILTON BUTEAUX,
Petitioner,

vs.

JOHN E. BENNETT, WARDEN,
Iowa State Penitentiary,
Fort Madison, Iowa,
Respondent.

APPLICATION FOR LEAVE TO APPEAL IN FORMA PAUPERIS, AND FOR LEAVE TO FILE TYPEWRITTEN RECORDS AND BRIEFS

TO: THE SUPREME COURT OF IOWA

Comes now Dale Milton Buteaux, petitioner, in the above entitled cause, and respectfully request that the following request prayed for be granted by this Honorable Court.

1. That petitioner in the above entitled cause, be allowed leave to proceed with an appeal in habeas corpus, in forma pauperis, in which notice of appeal has been made on January 28th, 1964, to the Lee Dist. Court, at Fort Madison, Iowa, denying the writ on January 10th, 1964.

Petitioner's Motion to Proceed in Forma Pauperis, and Affidavit of Poverity is attached hereto in support of said request.

2. That petitioner in the above entitled cause, be allowed leave to use typewritten records and briefs in his habeas corpus appeal

Petitioner request that the Court, inform him as to the number of typewritten copies is required, should leave be granted.

WHEREFORE, petitioner prays that this Honorable Court will grant the request asked for in this cause, and petitioner will for ever pray.

Respectfully submitted

Dated January 28th, 1964.

Dale Milton Buteaux
No. 27357, Box-316
Fort Madison, Iowa.
Petitioner.

FILED
FEB 3 1964
ELLEN M. LYMAN
CLERK SUPREME COURT

IN THE SUPREME COURT OF IOWA

DALE MILTON BUTEAUX, Petitioner,)
)
v.)
)
JOHN E. BENNETT, Warden, Iowa State) ORDER ON APPLICATION
) AND MOTION
Penitentiary, Fort Madison, Iowa,)
)
Respondent.)

The application and motion filed by appellant Dale Milton Buteaux herein on January 29, 1964, have been duly considered and the order thereon is as follows:

The appeal is to be docketed without payment of filing fee or other costs.

The appeal may be submitted on typewritten record and briefs, six copies of which shall be filed.

DONE this 31st day of January, 1964.

THE SUPREME COURT OF IOWA

Chief Justice

Take 4 cert copies.

B2

FILED
JUN 5 1964
HELEN M. LYMAN
CLERK SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF IOWA

JACK H. HOSKINS

APPELLANT

VS.

JOHN E. BENNETT, WARDEN
Iowa State Penitentiary
Fort Madison, Iowa

APPELLEE

General No. _____

APPLICATION FOR LEAVE TO PROCEED WITHOUT PAYMENT OF COSTS OR FEES AND FOR LEAVE TO USE TYPWRITTEN RECORDS, BRIEFS AND ARGUMENTS ON THE APPEAL IN THIS CAUSE

B3

STATE OF IOWA)
(SS
COUNTY OF LEE)

Comes now Jack H. Hoskins, Appellant above-named, upon appeal to the Supreme Court of Iowa from the judgements of the Lee County District Court, in Cause No. 13680 and states the following:

FILED
JUN 5 1964
HELEN M. LYMAN
CLERK SUPREME COURT

1. Appellant is an inmate of the Iowa State Penitentiary, Fort Madison, Iowa, and has filed timely notice of appeal from adverse judgements denying him relief in a habeas corpus action.

2. Appellant is without means to obtain sufficient funds to pay the usual costs and fees, or to pay for the printing of the Abstract of Record, Briefs and Arguments, which are required to prosecute his appeal in this Court.

3. Appellant believes that he is entitled to the relief sought in the habeas corpus proceeding below, and in the review of the District Court's judgement in this Court.

4. The record in this cause is lengthy, the Proposed Abstract consisting of 119 typewritten pages.

WHEREFORE, Appellant requests permission to proceed without payment of the usual costs and filing fees, and to submit the case upon four (4) typewritten copies of Abstract of Record, and four (4) typewritten copies of Appellant's Brief and Arguments.

Respectfully,

Jack H. Hoskins

Jack H. Hoskins 26190
Box 316
Fort Madison, Iowa

Subscribed and sworn to before me this 4 day of June A.D., 1964 in my office at Fort Madison, Lee County, Iowa.

Ralph D. Moehn

Ralph D. Moehn
Notary Public and for
Lee County, Iowa

My commission expires July 4, 1966.

FILED
JUN 18 1964
HELEN M. LYMAN
CLERK SUPREME COURT

IN THE SUPREME COURT OF IOWA

B4

JACK H. HOSKINS, Appellant,)
)
v.)
)
JOHN E. BENNETT, Warden, Iowa State Penitentiary, Fort Madison,) ORDER ON APPLICATION
)
Appellee.)

Appellant's application filed June 5, 1964, was considered by the court and IT IS ORDERED that he be permitted to file the record and briefs and arguments herein without payment of filing fee or other costs.

IT IS FURTHER ORDERED that the appeal be submitted on typewritten copies of the record, briefs and arguments, and that six copies of each shall be filed.

DONE this 11th day of June, 1964.

THE SUPREME COURT OF IOWA

H. G. Garfield
Chief Justice

Copy has been mailed to appellant.

IN THE SUPREME COURT OF IOWA

JAMES E. HARLESS	*	General No. 51736
APPELLANT	*	APPLICATION FOR LEAVE TO USE TYPEWRITTEN RECORDS, BRIEFS AND ARGUMENTS ON THE APPEAL IN THIS CAUSE
VS.	*	
JOHN E. BENNETT, WARDEN Iowa State Penitentiary Fort Madison, Iowa	*	
APPELLEE	*	

B5

STATE OF IOWA)
COUNTY OF LEE)

Comes now James E. Harless, Appellant above-named, upon appeal to the Supreme Court of Iowa from the judgments of the Lee County District Court, in Cause No. 13897 and states the following:

1. Appellant is an inmate of the Iowa State Penitentiary, Fort Madison, Iowa, and has filed timely notice of appeal from adverse judgments denying him relief in a habeas corpus action.

2. Appellant is without means to obtain sufficient funds to pay for the printing of the Abstract of Record, Briefs and Arguments, which are required to prosecute his appeal in this Court.

3. Appellant believes that he is entitled to the relief sought in the habeas corpus proceeding below, and in the review of the District Court's judgment in this Court.

WHEREFORE, Appellant requests permission to submit the case upon typwritten copies of the Abstract of Record, and ~~one~~ typwritten copies of the Appellant's Brief and Arguments.

Respectfully,

James E. Harless

James E. Harless, 24344
Box 316
Fort Madison, Iowa

Subscribed and sworn to before me this 5 day of February A.D., 1965 in my office at Fort Madison, Lee County, Iowa.

Ralph D. Noem

RALPH D. NOEM
Notary Public in and
for Lee County, Iowa

My commission expires July 4, 1966.

FILED
APR 7 - 1965
HELEN M. LYMAN
CLERK SUPREME COURT

IN THE SUPREME COURT OF IOWA

B6

JAMES E. HARLESS,

Appellant,

v.

JOHN E. BENNETT, WARDEN
Iowa State Penitentiary
Fort Madison, Iowa

ORDER AUTHORIZING TYPEWRITTEN RECORD AND BRIEFS

NOW on this 7th day of April, 1965, it is hereby ordered that plaintiff may file 9 copies of his typewritten record and briefs, in lieu of printed record and briefs, to be used by the court upon submission of the appeal in this case.

SUPREME COURT OF IOWA

By T. G. Garfield
CHIEF JUSTICE

74
4-7-65

Clerk of Supreme Court

HELEN M. LYMAN
CLERK

STATE OF IOWA
Des Moines

TEL. 281-5911

September 8, 1966

Mr. Dom R. Bennett
Assistant Attorney General
State of Iowa
Des Moines, Iowa

Re: State v. Lawrence Long
Supreme Court Criminal
Appeal No. 51355

Dear Mr. Bennett:

This is to advise you that a check of our records reveal the following:

1. On March 17, 1964, Lawrence Long's attorney, Harold B. Heslinga, Oskaloosa, Iowa, caused to be filed in my office the necessary copies of the appellant's printed abstract of record.

2. On April 30, 1964, Mr. Heslinga caused to be filed in my office the necessary copies of the appellant's brief and argument and our records indicate that a copy of the same was served on the Attorney General.

3. On May 29, 1964, the Attorney General for the State of Iowa caused to be filed in my office the necessary copies of the State's denial of and amendment to the appellant's abstract of record and its brief and argument. Our records further reflect that on September 23, 1964, the case was presented to the Supreme Court of Iowa on Oral Argument, Heslinga and Heslinga presenting the argument for Lawrence Long.

Yours very truly,

Helen M. Lyman

Clerk of Supreme Court

THE OFFICE OF
LAKE E. CROOKHAM
MAHASKA COUNTY ATTORNEY
OSKALOOSA, IOWA
Telephone 673-7014

September 8, 1966

Don Bennett
Attorney General's Office
State Capital Building
Des Moines, Iowa

C2

Dear Mr. Bennett:

Please be advised that I did on this date contact the Clerk of the District Court of Mahaska County, Iowa, and LeRoy Peterson, Court Reporter for the Honorable Harold Fleck, Judge of the District Court, concerning the possession of a transcript of the evidence of the case of the State of Iowa virus Lawrence Long, in Criminal Docket 4 at Page 234. This is to advise you that there is not a copy of the transcript filed in the Clerk's office, however, there are three copies in existance; one of which was delivered at State expense to the Defendant's attorney of record, Harold Heslinga of Oskaloosa, Iowa, one copy delivered at State expense to the Attorney General's Office, and a third copy retained by LeRoy Peterson in his files in the reporters office in the Court courthouse in Oskaloosa, Mahaska County, Iowa. The said copy retained by LeRoy Peterson is the copy retained by him and is available for inspection and examination by any person interested in this matter.

Mr. Peterson advised me that no person had requested nor indicated a desire to see or examine the transcript kept by him in the courthouse.

Sincerely yours,

Lake E. Crookham
Mahaska County Attorney

LEC/cjb

LAW OFFICES
HESLINGA & HESLINGA
118 NORTH MARKET STREET
OSKALOOSA, IOWA
52577

GAROLD F. HESLINGA
HAROLD B. HESLINGA

AREA CODE 515
TELEPHONE 673-8459

September 8, 1966

C3

Mr. Don Bennett
Assistant Attorney General
Department of Justice Annex
1217 Walnut Street
Des Moines, Iowa

Dear Mr. Bennett:

Enclosed find a copy of a letter written by me to Lawrence Long on the 2nd day of November, 1964. I was no longer in the employment of Mr. Long on such date and in my opinion, no attorney-client relationship then existed.

Also enclosed find a copy of the cross examination of Mr. Long by the Mahaska County Attorney. As indicated by my letter of November 2, 1964, a copy of such enclosure was sent to Mr. Long. The original of the trial transcript is and has at all times been in my possession.

Yours very truly,

/Harold B. Heslinga

Harold B. Heslinga

HBH:bng

Encs.